IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2003

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION No.11436 of 1996 and WRIT PETITION No.1145 OF 1997

The Management of Sri Ganapathy
Mills Co.Ltd.,
Sankaranagar,
Tirunelveli-627 357. ... Petitioner in W.P.
No.11436/96 & 2nd
respondent in
W.P.1145/1997

-Vs-

1. The Presiding Officer,
Special Industrial Tribunal,
Madras. ... 1st Respondent
in both the W.Ps.

2. N.Kandiah ... Petitioner in
W.P.1145/1997 &
2nd respondent in
W.P.11436/1996

Writ Petitions under Article 226 of the Constitution of India
praying for issuance of writ of certiorari and writ of certiorarified
mandamus, respectively as stated therein.

!For Petitioner in
W.P.11436/96 &
2nd respondent
in W.P.1145/97 .. Mr.Vijay Narayan

^For Respondents .. Mr.K.M.Ramesh for
Petitioner in W.P.1145/97 & 2nd respondent in
W.P.No.11436/1996

:COMMON ORDER

The petitioner in Writ Petition No.11436 of 1996 is the

management and it has sought for issuance of writ of certiorari to quash the records in Complaint No.2 of 1993 in I.D.Nos.1,2 and 3 of 1993, pertaining to the Award, dated 8.11.1995, insofar as it relates to the relief of wages from 31.1.1993 till the date of award.

2. The petitioner in Writ Petition No.1145 of 1997 is the Workman and he has sought for issuance of writ of certiorarified mandamus for quashing the same award insofar as it denies the relief of reinstatement with continuity of service and all other attendant benefits and directing the respondent/management to reinstate the petitioner/ workman in service with continuity of service and all other benefits.

3. Since both the writ petitions arise out of the same award, they are heard together and a common order is passed. The parties are referred to as arrayed in Writ Petition No.l1436 of 1996 in this order.

4. The second respondent/workman was employed as a Sider in the Spinning Department of the petitioner/ management mill. The second respondent/workman took active part in the general textile strike in Tamil Nadu from 15.12.1992 and the petitioner/management issued three charge sheets in succession and the first and third charge sheets related to alleged wastage of yarn and the second charge sheet related to absence in the work spot during working hours. The petitioner/ management conducted three domestic enquiries and the enquiry officer found all the charges levelled against the second respondent/workman were proved and a second show cause notice was issued to the second respondent/workman on 26.2.1993 and the petitioner/ management issued final order, dated 6.3.1993, dismissing the second respondent/workman from service with effect from 31.1.1993. At the relevant point of time, a dispute was pending in the first respondent Industrial Tribunal relating to the Textile Mills in Tamilnadu, regarding the General Charter demands, to which the petitioner/management mill was a party. The petitioner/management, by omission, did not seek approval of the action under Section 33(2)(b) of the Industrial Disputes Act to dismiss the second respondent/workman from service. Therefore, the second respondent/workman filed a complaint under Section 33(A) of the Act, which was taken on file as complaint No.2 of 1993 in I.D.Nos.1,2 and 3 of 1993. The petitioner/management filed counter statement. The validity of the domestic enquiry was taken as preliminary issue and the petitioner/management was permitted to let in evidence on the merits of the charges and the first respondent Industrial Tribunal, by its award, dated 8.11.1995, came to the conclusion that the charges were proved and the non employment of the second respondent/workman was justified. However, the first respondent Industrial Tribunal held that inasmuch as the domestic enquiry was held to be invalid, but subsequently, the Tribunal upheld the punishment, the second respondent would be entitled to wages from the date of dismissal, namely, 31.1.1993, till the date of award, namely, 8.11.1995. Aggrieved by the declining of the relief of reinstatement with backwages and other benefits, the second respondent/workman has challenged the award in W.P.No.1145 of 1997 and aggrieved by the granting of relief of wages from 31.1.199 3 to the date of award, the petitioner/management has challenged the award in W.P.No.11436 of 1996.

5. Heard the learned counsel for the petitioner/management and the second respondent/workman.

6. The facts are not disputed. The petitioner/management issued final order, dated 6.3.1993 dismissing the second respondent/workman from service with effect from 31.1.1993 and at the relevant point of time, an industrial dispute relating to the Textile Mills in Tamilnadu, regarding the General Charter of Demands, of which the petitioner mill was a party, was pending before the first respondent Tribunal and the petitioner/management, by omission, did not seek the approval of its action to dismiss the second respondent/workman from service under Section 33(2)(b) of the Act before the first respondent Tribunal. The learned counsel for the second respondent/workman contended that the conditions contained in the proviso to Section 33(2)(b) are mandatory in nature and their non compliance would render the order of dismissal void and the second respondent/workman would be deemed to have continued in service and entitled to all the benefits of service and he relied on the decision of the Constitution Bench of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and others (2002-I-LLJ 834). In the above decision, Their Lordships of the Supreme Court considered the question of approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 on a reference made to the Constitution Bench and laid down the law as follows.

"15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33-A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employee who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. .....

16. .....

17. .....

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Strawboard and Tata Iron and Steel Co. and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly."

7. The Constitution Bench endorsed the view taken in the case in Strawboard Manufacturing Co. vs. Gobind - (AIR 1962 SC 1500) and Tata Iron and Steel Co. Ltd. vs. S.N.Modak (AIR 1966 SC 380) and held that not making an application under Section 33(2)(b) seeking approval before any order is made thereon is a clear case of contravention of the proviso to Section 33(2)(b) and the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In the later decision in Indian Telephone Industries Ltd. vs. Prabhakar H.Manjare and another (2002-III-LLJ 113 4), the Apex Court referred to the Constitution Bench Judgment and held as follows.

"5. A Constitution Bench of this Court in Jaipur Zila Sahakari Bhoomi

Vikas Bank Ltd. (supra), has ruled that the conditions contained in the proviso to Section 33(2)(b) are mandatory in nature and their non-compliance would render the order of discharge or dismissal void or inoperative. It is further held that if the Tribunal refuses to grant approval sought for under Section 33(2)(b), the effect of it shall be that the order of discharge or dismissal had never been passed and consequently the employee would be deemed to have continued in service entitling him to all the benefits available. It is also made clear that not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). While approving the cases of Straw Board (Supra), and Tata Iron and Steel Co. (supra), the case of Punjab Beverages (supra), is overruled."

8. The law is well settled that non compliance of the condition contained in the proviso to Section 33(2)(b), which is mandatory in nature, would render the order of dismissal void and the effect of which shall be that the order of dismissal had never been passed and the employee would be deemed to have continued in service. In the present case, admittedly, the petitioner/management did not comply with the condition under Section 33(2)(b) while rendering the order of the dismissal of the second respondent/workman and hence it shall be that the order of the dismissal has never been passed and the second respondent/workman will be deemed to have been in service and entitled to all the benefits available to him. The second respondent/workman is entitled for the relief prayed for in his writ petition and at the same time, the petitioner/management is not entitled to the relief claimed in its writ petition.

9. In the result, writ petition No.1145 of 1997 is allowed as prayed for. Writ Petition No.11436 of 1996 is dismissed. No costs in both the petitions.

Index: Yes.
Internet:Yes.
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To:

The Presiding Officer,
Special Industrial Tribunal,
Madras.

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